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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,903	08/11/2000	KENJI KATO	S004-4034(PCT)	3167
40627	7590	07/02/2008		
ADAMS & WILKS 17 BATTERY PLACE SUITE 1231 NEW YORK, NY 10004			EXAMINER DINH, TAN X	
			ART UNIT	PAPER NUMBER
			2627	
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			07/02/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/582,903

## Applicant(s)

KATO ET AL.

## Examiner

TAN X. DINH

## Art Unit

2627

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7-9, 120-122 and 134-141 is/are rejected.
- 7) ☒ Claim(s) 131-133, 142 and 143 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

1) A Request for Continued Examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/24/2008 has been entered.

2) The amendment/preliminary amendment filed 3/24/2008 is acknowledged. Claims 3-6,10-119 and 123-130 have been canceled. New claims 131-143 are currently added.

3) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4) This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the

obligation under 37CFR1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C.103(c) and potential 35 U.S.C.102(c), (f) or (g) prior art under 35 U.S.C.103(a).

5) Claims **1,2,7-9,120-122** and **134-141** are rejected under 35 U.S.C. 103(a) as being unpatentable over **BREZOCZKY et al ( European Patent Application, EPA 0-549-236 A2 )**.

BREZOCZKY et al discloses a near-field optical head as claimed in claim 1, comprises a planar substrate having a first surface, a second surface disposed opposite to the first surface and an inverted conical or pyramidal hole extending through the first and second surfaces, the inverted conical or pyramidal hole having at least one fine aperture formed at an apex thereof and disposed in the first surface ( Fig.3, first surface 41, second surface 31, inverted conical with fine aperture 37; see also figures 5 and 7 for different lay out of the optical head ), an optical waveguide disposed directly on the second surface of the planar substrate for propagating light ( Fig.4, slider 51 and figure 5 in details of slider 51, aperture 76 for guiding laser beam 46 ), and a light reflection film disposed in the optical waveguide for reflecting in the direction of the fine aperture light propagated through the

optical waveguide ( Fig.5, mirror 61 ), *except to specifically show that* the inverted conical or pyramidal hole having at least one curved slant surface. Official Notice is taken that inverted conical or pyramidal hole having at least one curved slant surface are old and widely used in the optical recording art for guiding the light or laser beam, and therefore they are old and well known. It would have been obvious to use the old and well known inverted conical or pyramidal hole having at least one curved slant surface in near-field optical head such as BREZOCZKY et al's because, in the absence of any new or unexpected result, selecting of a known materials/elements based on its suitability for the intended use is deemed obvious. In re LESHIN, 125 USPQ 416.

Claims 2,7-9 and 120-122 are rejected with the same reasons set forth in previously Office actions.

Claim 134 is rejected with the same reasons set forth in claim 1 above.

Claim 135 is rejected with the same reasons set forth in claim 2 above.

Claims 136-138 are rejected with the same reasons set forth in claims 7-9 above.

Claims 139-141 is rejected with the same reasons set forth in claims 120-122 above.

6) Claims **131-133,142** and **143** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7) Applicant's arguments filed **3/24/2008** have been fully considered but they are not persuasive.

The feature of optical waveguide having inverted conical or pyramidal hole having curved slant surface or multiple slant angles are old and widely used in optical head for guiding the light or laser beam during recording or reproducing processes ( See ITO et al, US 5,734,632, figures 3a and 5a for curved slant surface and US 6,304,527, figure 6B for multiple slant angles ).

For that reasons claims **1,2,7-9,120-122** and **134-141** are still found rejectable as shown above.

8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TAN Xuan DINH** whose telephone number is **571-272-7586**. The examiner can normally be reached on **MONDAY-FRIDAY from 8:30AM to 5:30PM**.

The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the **Patent Application Information Retrieval (PAIR)** system. Status information for published applications may be obtained from either **Private PAIR** or **Public PAIR**. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/TAN Xuan DINH/  
Primary Examiner, Art Unit 2627  
June 27, 2008